

**Testimony of Jeffrey A. Rosen  
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U.S. Department of Transportation  
Before the  
Subcommittee on Regulatory Affairs  
Committee on Government Reform  
U.S. House of Representatives  
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Good morning, Chairman Miller, and members of the Committee. I am Jeffrey Rosen, General Counsel of the U.S. Department of Transportation (DOT or the Department). I am pleased to have the opportunity to speak with you this morning about the regulatory review and reform efforts of the Department.

Your specific interest today involves the Department's overall progress in response to the request of the Office of Management and Budget (OMB) for "public nominations of specific regulations, guidance documents and paperwork requirements that, if reformed, could result in lower costs, greater effectiveness, enhanced competitiveness, more regulatory certainty and increased flexibility." OMB noted its particular interest in addressing the burdens on small and medium-sized manufacturers. The five DOT reform nominations you are interested in were included in OMB's 2005 Report on *Regulatory Reform of the U.S. Manufacturing Sector*.

Scope of DOT Regulations

To fully appreciate DOT's regulatory review and reform efforts and our response to the specific nominations of DOT rules in the OMB Report, it is useful to understand both the scope of our responsibilities and the many steps we already take to address the possible need to reform our regulations.

The Department of Transportation must remain vigilant in the oversight and review of its regulatory activities. The various components of the Department of Transportation -- ten operating administrations and the Office of the Secretary -- have important statutory responsibility for a wide range of regulations. DOT has, by some measures, one of the largest rulemaking responsibilities in the Federal Government. Those responsibilities involve a broad range of matters that include safety, security, the environment, and economic development.

For example, DOT regulates safety in the aviation, motor carrier, railroad, mass transit, motor vehicle, commercial space, and pipeline transportation areas. We regulate consumer and economic issues in aviation and trucking, and provide financial assistance and rules necessary to implement programs for highways, airports, mass transit, maritime, railroads, and motor vehicle safety. And we issue regulations carrying out such disparate statutes as the Americans with Disabilities Act and the Uniform Time Act.

In addition, DOT has responsibility for developing policies that implement a range of regulations that deal with internal programs, such as acquisitions and grants, access for the disabled, environmental protection, energy conservation, information technology, property asset management, seismic safety, and the use of aircraft and vehicles.

We currently have over 200 ongoing rulemaking entries on our regulatory agenda. Of these, over 80 are deemed significant under Executive Order 12866 (E.O. 12866) ("Regulatory Planning and Review"), meaning that they are either costly or they have some other important public interest component. Of these, 10

are economically significant rulemakings, meaning they generally have an economic effect of at least \$100 million per year. In the last 12 months of the Regulatory Agenda cycle, DOT issued 28 significant rules and 110 nonsignificant rules (not including routine and frequent rules, such as Federal Aviation Administration (FAA) airspace actions).

### DOT's Periodic Regulatory Reviews

DOT and the industries we regulate have made significant achievements in terms of our regulatory objectives, perhaps best highlighted by the gains in safety statistics in recent years. DOT is constantly aware of the extraordinary risks faced in industries that annually transport millions of people, tons of hazardous materials, and all forms of raw materials and industrial and consumer goods. We are also responsible for ensuring that the billions of dollars we provide in financial assistance are used in accordance with statutory objectives and mandates. At the same time, we are also aware of the burdens our rules can impose, and in our rulemakings we consider the costs and benefits and determine whether those benefits justify the costs. In addition, we continuously review our existing rules, including any problems the regulated entities are having in complying with a particular rule, to determine whether changes are necessary.

Indeed, given our wide range of regulatory responsibilities and heavy regulatory docket, it is significant that the Department has a long-standing institutional commitment to regulatory review and improvement. Since 1979, DOT has had in place a formal DOT order on its "Regulatory Policies and Procedures" that requires significant rulemakings to be approved by the Secretary

of Transportation before they can be issued. This oversight and approval process is one that is managed by and is the responsibilities of the General Counsel.

Simply issuing high-quality rules, which we regard as essential, is not our sole goal. We also want to ensure that we periodically review rules that the Department has issued previously. We want to assess whether our existing rules are still necessary, whether they still work well, and whether they can be improved; and we want to examine our overall agenda of planned rulemakings to ensure that we are moving in the right direction, that we have the right priorities in terms of achieving our statutory objectives, and that we are mindful of the costs and burdens involved, so unnecessary costs and burdens can be avoided.

As far back as our 1979 “Regulatory Policies and Procedures,” the Department required its component agencies to have a program for reviewing existing regulations and revoking or revising those that are not achieving their intended purpose. This process identifies rules for review by considering such things as whether a rule overlaps or duplicates other regulations, involves internal inconsistencies or conflicts, addresses a problem that continues to exist, involves heavy or unnecessary burdens on regulated parties, is responsive to technological or other changes, or is the subject of numerous complaints or requests for clarification or exemption.

An important aspect of the Department’s commitment to reviewing existing regulations involves a program DOT established in 1998 for a ten-year “rolling” review of our rules to respond to our responsibilities under our “Regulatory Policies and Procedures,” E.O. 12866, section 610 of the Regulatory

Flexibility Act, and a Presidential directive on plain language. The current schedule, status, and results of the review program are included in each publication of the Department's semiannual Regulatory Agenda. The FAA conducts its reviews, other than those required by Section 610, in a different manner. The FAA reviews its rules on a three-year cycle. Its last one was initiated on February 25, 2004, (69 Fed. Reg. 8575), with a request for comments. I have submitted for the Subcommittee's information Appendix D to our May 2005 Regulatory Agenda, which lists the current review status and activity.

In appropriate situations, the various agencies of the Department have also undertaken special reviews of their existing regulations, often limited to specific subject areas. In addition, we recently decided to supplement our existing review program with a special opportunity for informal discussions between -- or written comments from -- those affected by DOT's rules and senior DOT officials. I would like to give you a little background on that effort.

#### Current Regulatory Review Efforts

DOT's long-term commitment to regulatory review and reform meshes well with the Bush Administration's strong emphasis on avoiding and reducing *unnecessary* burdens on the public. As part of the President's agenda, President Bush established a plan to build an environment that encourages innovation, lowers the cost of doing business, and promotes economic growth. One part of that plan includes encouraging investment and economic expansion by reducing

unnecessary regulation. In a recent speech the President said: "People are more likely to find work if the resources of business are not spent complying with endless and unreasonable government regulation from Washington, D.C. We will meet our duty to enforce laws whether it be environmental protection laws or worker safety laws. But we want to simplify regulations in this Administration and we are working hard to do so."

Secretary Mineta has taken this goal to heart as well. In recent public remarks he gave at the FAA's Forecast Conference, Secretary Mineta emphasized that "President Bush has made reducing unnecessary costs associated with Federal regulations a priority. In keeping with the President's goal, I have directed our General Counsel to conduct a far-reaching review of the Department's regulations. This could mean simplifying regulations, or even eliminating those that are no longer necessary, to come up with the least costly, most effective way of carrying out our responsibilities."

We began this DOT-wide review with a January 26, 2005, *Federal Register* notice, which I have also submitted for the Subcommittee's information. In response, we received 66 written comments from groups and individuals. We also held a public meeting on April 12, 2005, over which I had the opportunity to preside, and at which 14 commenters discussed their thoughts on DOT rules with me and other senior DOT officials. The Department is now in the process of reviewing all the submissions and deciding what action to take in response to the comments.

### DOT Participation in OMB Government-Wide Regulatory Reviews

The Department has also been a very active participant in government-wide regulatory review and reform efforts led by OMB. In the most recent OMB review of the manufacturing sector of the economy, commenters identified 15 DOT regulations, and OMB asked the Department to focus on action on the following five items:

Federal Motor Carrier Safety Administration (FMCSA) rule on motor vehicle brakes. The National Association of Manufacturers and the National Marine Manufacturers Association asked FMCSA to consider letting commercial motor vehicles use a certain type of brake (called a “surge brake”) which is now authorized for consumer uses but not commercial uses. FMCSA is currently planning to publish a proposed rule on the subject in September 2005, with a final rule published by September 2006. Any amendments would be to Part 393 of Title 49 of the Code of Federal Regulations (49 CFR Part 393). To keep up with this rulemaking, interested persons can review the public rulemaking docket, which is designated number FMCSA-2005-21323; it can be found in the Department’s internet-accessible docket at [dms.dot.gov](http://dms.dot.gov). The public can sign up on a list serve at this site to get notification with links to copies of any future documents that a DOT agency places in any docket (e.g., a notice of proposed rulemaking). The Regulation Identifier Number (RIN)

is 2126-AA91, which will help identify the rulemaking in the *Federal Register*, the DOT semi-annual Regulatory Agenda, and other places.

FMCSA rule on hours of service. The Small Business Administration Office of Advocacy asked that these rules permit drivers who deliver goods locally to operate for more than 11 hours to reduce costs. FMCSA published a proposed rule February 4, 2005, to revise its entire hours of service rule, with a final rule expected to be published in August 2005. Any rule on this subject would affect 49 CFR Parts, 385, 390, and 395. The public rulemaking docket is FMCSA-2004-19608. The RIN for the rulemaking is 2126-AA90.

National Highway Traffic Safety Administration (NHTSA) rule on lighting and reflective devices. The National Association of Manufacturers and the Motor and Equipment Manufacturers Association asked for clarification and simplification of the existing rule, which is 30 years old and has been amended numerous times. NHTSA is planning to publish a proposed rule in December 2005, with a final rule published in October 2007. Any rule would amend 49 CFR 571.108. There is currently no Docket or RIN for this rulemaking

NHTSA rule on occupant ejection standard. Public Citizen asked NHTSA to address such issues as window glazing, side curtain and side impact airbags, and increases in strength of door locks and latches. NHTSA



published a proposed rule on side impact protection on May 17, 2004.

Final action is currently planned for early 2006. Any rule would amend 49 CFR 571.214. Its docket number is NHTSA-2004-17694. The RIN is 2127-AJ10. NHTSA also plans to publish a proposed rule establishing occupant containment performance requirements by December 2006.

Final action is anticipated in 2007. No docket, RIN, or CFR sections have yet been created. Finally, NHTSA published a proposed rule to increase door latch strength requirements, implementing the first United Nations global technical regulation, on December 15, 2004. Final action is expected in early 2006. Any final rule would amend 49 CFR 571.206. The docket is NHTSA-2004-19840 and the RIN is 2127-AH34.

NHTSA rule on vehicle compatibility standards. Public Citizen urged NHTSA to include a standard metric rating to evaluate vehicle mismatch, establish compatible bumper heights, and mitigate harm done by “aggressive design.” NHTSA is currently finalizing a report to OMB on the status of research in this area, which we will soon submit to OMB. Note that NHTSA published a report in June 2003 on “Initiatives to Address Compatibility,” identifying a number of initiatives to improve vehicle compatibility. To improve side impact compatibility, in May 2004, the agency published a notice of proposed rulemaking to upgrade existing Federal Motor Vehicle Safety Standard No. 214, “Side impact protection.” A final rule is currently planned for February 2006. It also initiated a crash test program following the 2003 report to assess the viability of

several potential frontal crash compatibility metrics. The testing to date has not been successful in identifying metrics that could be measured in crash tests and correlated to real-world safety. Further research and development, both by NHTSA and internationally, is being conducted in an attempt to identify viable compatibility metrics. Results from these tests will not be available until 2006. Subsequently, a decision will be made on whether there is sufficient scientific basis to pursue a regulatory requirement for compatibility.

These items, and the Department's responses, give a flavor both of the variety of the often technical subjects that DOT rules address and the ability of the Department to respond – and often to anticipate – the concerns of the public.

#### DOT's Use of Sunset Provisions in Regulations

In addition, I would mention one innovative approach that the Department has taken in recent years to ensure review of specific regulations. On some, limited occasions when we issue a new rule, we include in the text of the rule itself a provision mandating such review. For example, in 1992, we issued a rule on airline computer reservation systems (CRS) that contained a sunset date. Before the sunset date, we initiated a review of the rule. After determining that the on-going changes in the airline distribution and CRS businesses, such as the increasing importance of the Internet, made the rules unnecessary, we decided to allow most of the rules to expire on January 31, 2004, except for two provisions that expired on July 31, 2004. We also added a sunset date to a 1998 final rule under the Americans for

Disabilities Act concerning over-the-road buses. We are beginning this review in October of this year. More recently, in the rule revising our disadvantaged business enterprise program for airport concessions, published in March 2005, we included another sunset provision. This rule will go out of effect in April 2010 unless the Department renews it. We will conduct a review in 2008 - 2009 to help us determine whether to extend the rule, modify it, or allow it to go out of effect. I anticipate that we will expand the use of this sunset review process as we go forward.

#### Other Avenues of Regulatory Review

It is very important to keep in mind that formal regulatory review programs are not the only way that we determine the need to revise or revoke existing regulations. Through such actions as our regular review of accident and incident data, the inspections conducted by our field personnel, the concerns we hear through our daily involvement with those affected by our rules, our review of changing technology, and our review of petitions for rulemaking that members of the public may submit to us, we identify rules that need fixing.

Regulatory review is a very important priority at the Department of Transportation, which gets the personal attention of high level officials. As General Counsel, I have overall supervision of the entire regulatory process, including reviewing and making recommendations to the Secretary on all significant rules. In addition, we have weekly regulatory review meetings with the Deputy Secretary and the Secretary's Chief of Staff. Each week, we meet

with a different operating administration usually including the agency Administrator. At those meetings, we discuss every rulemaking action on the operating administration's agenda. The discussions generally cover the need for the rulemaking, our priorities, and our progress in meeting schedules for each project; these meetings often involve discussions among the senior DOT officials present on important substantive issues. These regulatory review meetings played an important role in the Department's decisions during the last five years to terminate or withdraw almost 180 potential rulemakings that were deemed unnecessary or unproductive, and a similarly important role in ensuring that useful and necessary rules were issued in a timely way.

#### DOT's Use of Technology to Enhance Public Participation

It is also worthwhile to note that DOT is a leader in the use of electronic technology to increase and improve the opportunities for public participation in our programs for reviewing our existing rules as well as in the rulemaking process in general. The use of this technology is especially valuable for small entities that do not always have easy access to governmental processes and records. Our efforts include creating the first internet-accessible electronic rulemaking docket ([dms.dot.gov](http://dms.dot.gov)) in the government, which also offers a list-serve; creating a web page ([regs.dot.gov](http://regs.dot.gov)) that provides a monthly update on the substance and status of all of our ongoing significant rulemaking projects; providing detailed guidance, interpretations, question-and-answer sites, and other

information on various web sites; and working with researchers to develop even better tools for understanding our proposed and final rules.

### Conclusion

Thank you again for the opportunity to discuss with you the Department's regulatory review program and the specific nominations affecting DOT in the OMB Report. We expect to take some form of action on all five nominations in the OMB report in calendar year 2005. As I know you appreciate, it would be inappropriate for me to discuss specific actions we might take concerning ongoing rulemakings, but, I would be pleased to answer any questions you have about our overall regulatory program or the many positive steps we have taken to ensure the effective, regular review of our regulations.